IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8181 OF 2004

Shri Azhar I. Ansari..... ..... Petitioner.

Versus

M/s. Achala Resorts Pvt.Ltd..... Respondents.

None present for the Petitioner.

Mr. Madhav Jamdar for Respondents.

CORAM : S. C.DHARMADHIKARI, J.

DATED : 20TH DECEMBER, 2004.

P.C.:

None appeared when this matter was placed on 17th December, 2004 and therefore I directed the matter to be placed today. Although, the name of the learned Counsel appearing for the Petitioner was shown on the Board, none appeared on 17th December, 2004 nor today.

2. The trial Court as well as the lower appellate Court has decreed the suit instituted by the Respondent against the Petitioner for non-user of the suit premises. The decree under Section 13(1)(k) has been rightly passed in as much as the Courts below have held that the materials produced before them

clearly indicate that the Petitioner had migrated and settled down permanently in United States of America along with his family members. The evidence placed by the Respondent landlord in that regard has been taken into consideration and the courts below have held that the landlord is entitled to the decree. From 1991 till 2001 the Petitioner did not come to Pune at all. The courts below have also found no substance in the plea of res-judicata and in my opinion rightly, because the earlier suit and the suit presently instituted are on a distinct cause of action. It is established by the Respondent landlord that the suit premises has not been used for a continuous period of six months prior to the institution of the suit without any sufficient cause.

3. There is no substance in this writ petition and it is accordingly dismissed.

Sd/-

(S. C. DHARMADHIKARI,J.)